

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-03-TP-457
)	
WGUL-FM, Inc.)	NAL/Acct. No.200432700012
Owner of Antenna Structure Registration Number)	
1027884 in Lecanto, Florida)	FRN 0005815832
Palm Harbor, Florida)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 8, 2004

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find WGUL-FM, Inc., (“WGUL”), owner of antenna structure 1027884 in Lecanto, Florida, willfully and repeatedly violated Section 17.51(a) and Section 17.57 of the Commission's Rules (“Rules”)¹ by failing to exhibit red obstruction lighting on structure #1027884 from sunset to sunrise and failing to immediately notify the Commission upon any change in ownership information. We conclude that WGUL is apparently liable for a forfeiture in the amount of thirteen thousand dollars (\$13,000).

II. BACKGROUND

2. WGUL owns antenna structure #1027884 located in Lecanto, Florida. The structure’s Antenna Structure Registration (“ASR”) specifies that the structure be painted and lit with red obstruction lighting.

3. On December 1, 2003, agents from the FCC Enforcement Bureau, Tampa Office observed that structure 1027884 was not illuminated per its assigned painting and lighting specifications in that the top and ½ level red beacons were extinguished during nighttime hours. On December 1, 2003, an FCC agent contacted the Federal Aviation Administration (“FAA”) who confirmed that a light outage on this structure had not been reported by the structure owner.

4. On December 3, 2003, agents from the FCC Enforcement Bureau, Tampa Office observed that structure 1027884 was not illuminated per its assigned painting and lighting specifications in that the top and ½ level red beacons were extinguished during nighttime hours.

5. On December 11, 2003 an agent from the FCC Enforcement Bureau Tampa Office spoke

¹ 47 C.F.R. §§ 17.51(a) and 17.57.

with the station engineer from WXOF(FM) regarding the ownership of antenna structure 1027884.² The station's engineer confirmed that the owner currently listed in the FCC Antenna Structure Registration database was the previous owner of the structure and that WGUL-FM Inc. is the current owner. The engineer stated that the station reported the light outage to the FAA on December 8, 2003. As of January 7, 2004, the FCC Antenna Structure Registration database still had not been updated with current ownership information. On March 3, 2004, the engineer for WGUL-FM Inc. confirmed to the agent that WGUL-FM Inc. owned the structure.

III. DISCUSSION

6. Section 17.51(a) requires that all red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified. On December 1, and 3, 2003 WGUL failed to exhibit red obstruction lighting on antenna structure 1027884 in accordance with its registration requirements. In addition, WGUL failed to notify the FAA of the light outage until December 8, 2003.³

7. Section 17.57 requires that the owner must immediately notify the Commission upon any change in structure height or change in ownership information. From at least December 1, 2003 to January 7, 2004, the FCC Antenna Structure Registration database reflected Heart of Citrus, Inc. as the current owner of antenna structure 1027884.

8. Based on the evidence before us, we find WGUL willfully⁴ and repeatedly⁵ violated Sections 17.51(a) and 17.57 of the Rules by failing to exhibit tower lights on structure 1027884 and failing to immediately notify the Commission upon any change in ownership information.

9. Pursuant to Section 1.80(b)(4) of the Rules,⁶ the base forfeiture amount for failure to exhibit red obstruction lighting is \$10,000. The base amount for failure to file required forms or information is \$3,000, Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), requires us to take into account "...the nature, circumstances, extent, and gravity of the violation, and

² Station WXOF(FM) utilizes this antenna structure as part of its station. WGUL-FM Inc. is licensee of station WXOF(FM) in addition to owning the antenna structure.

³ Owners of registered antenna structures with assigned lighting must immediately report to the FAA any known improper functioning of any top or flashing light. See 47 C.F.R. § 17.48(a).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁵ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁶ 47 C.F.R. § 1.80(b)(4).

with respect to the violator, the degree of culpability, any history or prior offenses, ability to pay, and other such matters as justice may require.”⁷ Considering the entire record and applying the factors listed above, this case warrants a \$13,000 forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ WGUL-FM, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for willful and repeated violation of Sections 17.51(a) and 17.57 of the Rules by failing to exhibit obstruction lighting on structure 1027884 and failing to immediately notify the Commission upon any change in ownership information.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules¹⁰, within thirty days of the release date of this Notice of Apparent Liability, KGUL-FM, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

13. The response if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington, DC 20554, Attn: Enforcement Bureau-Spectrum Enforcement Division, and MUST INCLUDE THE NAL/and FRN referenced in the letterhead above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹⁰ 47 C.F.R. § 1.80

¹¹ See 47 C.F.R. § 1.1914.

involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

16. IT IS FURTHER ORDERED THAT a copy of this Notice of Apparent Liability shall be sent by regular mail and Certified Mail Return Receipt Requested to WGUL-FM, Inc., 35048 US Highway 19, North, Palm Harbor, FL 34684.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director - Tampa Office
Enforcement Bureau